IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

TUESDAY, THE 20TH NOVEMBER 2007 / 29TH KARTHIKA 1929

Crl.MC.No. 3211 of 2003(B)

CRIME NO.246/2002 OF VANCHIYOOR POLICE STATION

PETITIONER: ACCUSED

ADVOCATE V.V.NARAYANA MENON @ VADAKARA
V.V.N.MENON, 'PRIYA', T.C. NO. 27/1914,
KUNNUMPURAM, THIRUVANANTHAPURAM.

BY ADV. SRI.M.K.DAMODARAN (SR.)
SRI.SOJAN MICHEAL

RESPONDENTS: COMPLAINANT

STATE OF KERALA, REPRESENTED BY THE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

ADDL.R2 IMPLEADED

2. DR.M.R.GOPALAKRISHNAN NAIR,
AGED 63 YEARS, S/O. SRI.P.RAMAKRISHNAN NAIR,
RESIDING AT KAUSTHUBHAM TC. 28/2727(I),
KUNNUMPURAM NEAR AYURVEDA COLLEGE,
GENERAL POST OFFICE, THIRUVANANTHAPURAM.
IS IMPLEADED AS ADDL. R2 AS PER ORDER DT. 3.9.03 IN
CRL.MA. 8928/03.

BY PUBLIC PROSECUTOR SRI.AMJAD ALI
SRI.K.L.NARASIMHAN

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 13/11/2007, ALONG WITH CRMC NO. 3494 OF 2003 THE COURT ON 20/11/2003 PASSED THE FOLLOWING:

K.R. UDAYABHANU, J.

CRL.M.C.NOS. 3494 & 3211 OF 2003

DATED THIS THE 20TH NOVEMBER 2007

ORDER

Crl.M.C.No.3494/2003 is filed by the accused husband and wife in Crime No. 192/2002 of Vanchiyoor Police Station (C.C.No.349/2004 in the file of the Judicial First Class Magistrate Court-V, Thiruvananthapuram) with respect to the offences under Sections 341,323,324 read with Section 34 of the Indian Penal Code seeking to get quashed the above proceedings alleging that the same is just abuse of process of the court. Crl.M.C.No.3211/2003 is filed by the accused husband in Crime No.246/2002 of Vanchiyoor police station (C.C.No.595/2004 of Judicial First Class Magistrate Court-V, Thiruvananthapuram) with respect to the offence under Section 454 of the Indian Penal Code, also seeking the same relief. The above criminal cases against the petitioners have been initiated at the instance of the landlord of the building in which the 2nd petitioner in Crl.M.C.No.3494/2003 i.e. the wife of the first petitioner is the

tenant. It is the case of the petitioners that criminal complaints have been falsely filed just to see that the petitioners are evicted from the tenanted premises. There were disputes with respect to rent paid, occupation of the premises and the 2nd petitioner had instituted original suit, O.S.No.1263/2002 in the court of Principal Munsiff, Thiruvananthapuram seeking perpetual injunction restraining the respondents, i.e. the house owner, her husband and son from forcibly evicting the 2nd petitioner and her family; and the court had issued an order of interim injunction. It is the allegation that Crime No.192/2002 has been filed just on the night of the day, i.e. 10-9-2002 of filing of the original suit and issuance of the ex parte interim injunction. As per the renewed rent deed which the 2nd petitioner had unwittingly signed, there is a clause that one of the rooms in the building is set apart for the occupation of the landlord but the identity of the said room has not been indicated in the rent deed. The landlord is residing in the adjacent building. The allegation is that the son of the landlord and his wife were sleeping in the above room and that in the midnight the first petitioner and his

wife through the air hole made to fill the room with smoke containing smell of chilly and the son of the landlord contacted his father through mobile phone and then opened the door and that the son of the landlord and his wife were manhandled by the petitioners. According to the petitioners, the above version is absolutely false. It is pointed out that in the rent control petition filed subsequently by the landlord the Rent Control Court has noted that in fact the tenanted premises was not at all found to have been kept in occupation by the landlord. It is pointed out that the 2nd petitioner is an Ayurvedic Doctor undergoing M.D.course and had occupied the premises with an understanding that she can continue living in the premises for five years. The first petitioner is the lawyer. The landlord had demolished of a portion of the compound wall of the building so that the security to the household was considerably threatened and that the landlord was making every inconvenience to see that the petitioners are evicted from the premises. It is submitted that subsequent to the order in the R.C.P. they have vacated the building and no appeal or other proceedings have been initiated

over the order of the Rent Control Court. It was only forcible eviction that was sought to be injuncted by filing the civil suit. The criminal proceedings involved in Crl.M.C.No.3211/2003 was initiated subsequently on 26-11-2002 against the petitioner, who is the husband of the 2nd petitioner in Crl.M.C.No.3494/2003, alleging that during the period from 27-9-2002 to 26-11-2002 the petitioner had attempted to force open the door of the room in occupation of the landlord in the tenanted premises that the commissioner has visited the property as per the order of the civil court prior to the alleged period mentioned in Crl.M.C.No.3211/2003 and that the commissioner has mentioned that the articles said to be intended to be removed are seen in the particular room. It is also pointed out that a charge under Section 454 I.P.C. alone is not maintainable in the absence of any substantive offence alleged.

2. As pointed out by Senior Advocate appearing for the petitioners and as can be seen from Annexure-3 copy of the plaint in O.S.No.1263/2002 and the order of the court below granting ex parte interim injunction the suit has been instituted

on 10-9-2002, and ex parte injunction granted on 11-9-2002 and it is on the particular night that the offence in crime No.192/2002 has allegedly taken place. The above coincidence is a factor in support of the case set up by the petitioners that the complaint has been filed before the police only on account of the ill-will created on account of the filing the original suit. The Rent Control Court has observed that the case that the landlord is an occupation of a room in the tenanted residential house is absolutely false and that there is no evidence to show that the landlord in his occupation of a room therein and that the case that the in the midnight from 10-9-2002 they were suffocated with smoke and the smoke was let in through the air hole of the adjoining room under occupation of the tenant is a story cooked up to establish that on 10-9-2002 the landlord is in occupation of the room in dispute. It is also noted in the oder in the R.C.P. that the commissioner has reported that he noticed a computer and some law books in the said room. Evidently the above observation is to the effect that the above room is in occupation of the tenant. As already noted above, the first

petitioner is a lawyer. The petitioners had also filed complaints before the police with respect to the same incident but the same was closed with a refer report and the petitioners have filed protest compliant. It is submitted that the above complaint has not been pursued. As can be seen from the order of the R.C.P.the claim of the landlord under Section 11(8) of the Kerala Buildings (Lease & Rent Control) Act was rejected but the prayer under Section 11(3) of the Act was allowed. As already noted above it is submitted that the petitioners have surrendered vacant possession of the premises. So far as crime No. 246/2002 involved in Crl.M.C.No.3211/2003 is concerned evidently the same cannot be sustained as the offence charged is only under Section 454 I.P.C. which cannot be sustained in the absence of a substantive crime in the matter. Moreover the allegations are too vague. As already noted above, the commissioner had found that the law books, typewriter etc. were seen in the above room. The case of the complainant/landlord is that the above are articles of the landlord and that the landlord is in occupation of the above room. The landlord is a house wife

and the husband is a retired Chemistry Professor and their son is an Asianet franchisee. It appears that both criminal cases initiated are based on false allegations and the same amount to abuse of process of the court. Both the proceedings pending against the petitioners vide C.C.No. 349/2004 & C.C.No.595/2004 in the file of the Judicial First Class Magistrate Court-V, Thiruvananthapuram (Crime Nos.192/2002 & 246/2002 of Vanchiyoor police station) are herewith quashed. The Crl.M.Cs.are allowed.

Sd/-

K.R.UDAYABHANU, JUDGE

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TRUE COPY

P.S.TO JUDGE

K.R.UDAYABHANU, J

CRL.M.C.NOS.3494 & 3211
OF 2003

ORDER

20-11-2007